

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KATHLEEN SPRADLEY,

Appellant,

v.

LIQUOR CONTROL BOARD,

Respondent.

)
) Case No. DEMO-99-0017

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held on December 6 and 7, 2000, in the Department of Transportation Maintenance Building in Port Angeles, Washington. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Kathleen Spradley was present and was represented by Mark S. Lyon, General Counsel for the Washington Public Employees Association. Respondent Liquor Control Board was represented by Mark A. Anderson, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from the disciplinary sanction of a demotion for neglect of duty, malfeasance, gross misconduct and willful violation of agency policy and procedure and WAC 292-110-010. Respondent alleges that Appellant failed to report a shortage of \$1409.79 to her district manager; wrote three non-sufficient fund checks to store #135 and used her position as store manager to waive the \$30 non-sufficient fund handling fee; failed to provided explanations for 21 cash shortages and overages; and borrowed \$1,800 in store funds.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Parramore v. Dep't of Social & Health Services, PAB No. D94-135 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-03516-4; Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

II. FINDINGS OF FACT

2.1 Appellant Kathleen Spradley was a Liquor Store Manager 1 and a permanent employee of Respondent Liquor Control Board at Liquor Store #135 in Sequim, Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal of her demotion May 12, 1999.

2.2 Appellant has worked for the Liquor Control Board since April 1989. She has a good work history with the agency. Appellant became a store manager on September 1, 1992. She has received training and feedback to assist her in performing the duties of a store manager. Appellant was aware of the agency's policies and procedures and as the store manager, she was responsible to assure that the agency's policies and procedures were followed at store #135.

2.3 By letter dated April 2, 1999, Naomi Lieurance, Director of the Product and Retail Services Division, notified Appellant of her demotion to a Liquor Store Clerk position at store #58 as a result of Appellant's neglect of duty, malfeasance, gross misconduct and willful violation of agency policy and procedure and of WAC 292-110-010, ethics in public service. Ms. Lieurance alleged that Appellant:

1. On February 28, 1998, failed to report a shortage of \$1409.79 to her district manager;

2. In August 1997, October 1997 and January 1998, wrote checks to store #135 that were returned for non-sufficient funds, was served with notices of dishonor, and in each instance, used her position as store manager to waive the \$30 non-sufficient fund handling fee;
3. During November 1997, failed to provided explanations for 21 cash shortages and overages; and
4. "Borrowed" \$1,800 in store funds that she repaid in cash on March 10, 1998.

2.4 Mike Prezel was an intermittent clerk for the LCB. He worked at both store #135 and the Port Angeles Liquor Store. He initially reported his concerns about cash shortages at store #135 to David Wilson, store manager for the Port Angeles store. Mr. Wilson contacted the loss prevention office on March 9, 1998. Mr. Prezel also contacted the loss prevention office on March 9.

2.5 Janice Torge', Operations Investigator, and Ron Nash, District Manager, conducted an investigation at store #135 on March 10, 1998. On March 26, 1998, Ms. Torge' issued a report which found that there was no shortage of funds at the store.

2.6 Mr. Prezel did not believe that the loss prevention office conducted a thorough investigation. As a result, on May 11, 1998, he filed a whistle blower complaint. The whistle blower investigation results were memorialized in a report dated November 24, 1998. The investigation found no evidence that Appellant was misusing state funds.

2.7 While the whistle blower investigation was in progress, Laurel Lewellen, Security and Loss Prevention Manager, was asked to conduct a separate investigation. She contacted all of the employees at store #135 regarding the allegations that Appellant had violated procedures and the union contract, misused state funds, falsified records, intimidated employees, abused her position,

1 and created a hostile work environment. Ms. Lewellen determined that the allegations were
2 confirmed and issued her report on September 25, 1998.

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4 *Incident 1*

5 2.8 Liquor Control Board (LCB) policies and procedures require that cash shortages or overages
6 of \$100 or more be reported to the district manager at the time of discovery.

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8 2.9 On the morning of Saturday, February 28, 1998, Sandra Reynolds, Assistant Store Manager
9 for store #135, reported to work. As the first order of business for the day, she attempted to balance
10 the store funds from the day before. She found a \$1409.79 shortage. When she discovered the
11 shortage, she telephoned Appellant. Ms. Reynolds did not report the shortage to the district
12 manager, but she did enter data into the computer that reflected the shortage.

13
14 2.10 Appellant reported to the store and removed money from a locked box. Appellant was the
15 only employee in possession of a key to the locked box. Using the money from the box, Appellant
16 was able to balance the funds. However, because it was the weekend, the additional funds did not
17 show as a deposit to the store's account until Monday, March 2, 1998.

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19 2.11 Appellant admits that she did not report the shortage to the district manager.

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21 *Incident 2*

22 2.12 LCB policy prohibits state property being converted to personal use and WAC 292-110-020
23 prohibits state employees from using state resources for private benefit or gain.

1 2.13 LCB procedures require the collection of a \$30 NSF fee from any customer who writes an
2 NSF check. The Notice of Dishonor of Check form informs customers that "[a] handling fee of
3 \$30.00 is assessed on all returned checks."

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5 2.14 The NSF fee is waived at store #135 if the customer immediately responds to the Notice of
6 Dishonor of Check and makes payment in the amount of the NSF check.

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8 2.15 On August 22, 1997, Appellant wrote an NSF check to store #135 for \$15. The check was
9 returned to the store and a Notice of Dishonor of Check was sent to Appellant on August 29, 1997.
10 Appellant made payment for the NSF check on October 6, 1997. She did not pay the \$30 handling
11 fee.

12
13 2.16 On October 7, 1997, Appellant wrote a second NSF check to store #135 for \$21.20. The
14 check was returned to the store and a Notice of Dishonor of Check was sent to Appellant on
15 October 11, 1997. Appellant made payment for the NSF check on October 24, 1997. She did not
16 pay the \$30 handling fee.

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18 2.17 On January 20, 1998, Appellant wrote a third NSF check to store #135 for \$21.95. The
19 check was returned to the store and a Notice of Dishonor of Check was sent to Appellant on
20 February 17, 1998. Appellant made payment for the NSF check on March 9, 1998. She did not pay
21 the \$30 handling fee.

22
23 2.18 Appellant admits that she wrote three non-sufficient fund (NSF) checks to store #135 and
24 that she did not pay the NSF handling fees.

25 *Incident 3*

1 2.19 LCB procedures require that "[a]ll cash shortages or overages of \$1.00 or more shall be
2 reported at the time of occurrence." Chapter 10 Section 4.2 of the P.O.S. Manual states, in part, that
3 "[c]ashier explanations should be done whenever the store or employee does not balance and the
4 reason is known. In addition, shortages or overages of \$1, known or unknown, will have
5 explanations for all employees. Shortages and overages of \$5 or more, known or unknown, will
6 have explanations for the store." The manual then lists how to enter the explanation into the
7 Cashier Explanation Report in the P.O.S. computer system.

8
9 2.20 An internal audit of store #135 was completed on September 25, 1998. The audit found that
10 during November 1997, the store reported 23 cash shortages and overages amounting to a shortage
11 of \$178.29. However, the Cashier Explanation Report contained only two explanations. Appellant
12 admits that explanations were not entered into the P.O.S. computer system.

13
14 *Incident 4*

15 A preponderance of the credible evidence and testimony establishes that the following events
16 occurred.

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18 2.21 On March 10, 1998, Ms. Torge and Mr. Nash investigated the allegation of cash shortages at
19 store #135 reported by Mr. Prezel and Mr. Wilson. Appellant was upset by the investigation and
20 made the comment to store clerk Lili Ring that she had borrowed \$1,800 and that it might be her
21 last day at work. Appellant made some telephone calls and while Ms. Torge and Mr. Nash were
22 away from the store, an unidentified woman came into the store and gave Appellant a large sum of
23 money in the form of cash.

24
25 2.22 At 10:11 a.m. on March 10, 1998, Appellant entered a cash only deposit into the store
26 computer. Some time later on the 10th, she placed the cash deposit into the night depository at the

1 bank to be deposited in the store's account. The bank processed the deposit at 9:52 a.m. on March
2 11, 1998. The deposit made by Appellant was in addition to the regular deposits made to the store's
3 account on March 10, 1998. The deposit detail report for March 10 shows that in addition to the
4 cash deposit Appellant made, a deposit was made at 2:59 p.m. for \$1,860 in cash and 1,807.88 in
5 checks.

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7 2.23 On March 13, 1998, an unidentified person came into the store and demanded that Appellant
8 repay \$1,800 from a personal loan made to her earlier that week. After arguing with the
9 unidentified person, Appellant went to the back of the store and acted as though she was going to
10 access the safe, however, Ms. Reynolds did not allow her to do so.

11
12 2.24 Appellant continued to function as the store manager at store #135 while the various
13 investigations were being conducted. Ms. Lieurance did not place Appellant on administrative
14 leave, but instead chose to closely monitor her work. After receiving the results of Ms. Lewellen's
15 investigation, Ms. Lieurance determined that discipline was warranted. She reviewed Appellant's
16 personnel history, reviewed the investigative reports and considered Appellant's responses to the
17 charges. Ms. Lieurance concluded that Appellant neglected her duty and violated agency policies
18 and procedures when she failed to report the \$1409.79 shortage to the district manager. She
19 concluded that Appellant neglected her duty, committed an act of malfeasance and violated the
20 agency's ethics policy and WAC 292-110-010 when she wrote three separate NSF checks and did
21 not pay the NSF handling fees. She concluded that Appellant violated agency procedures when she
22 failed to report shortages or overages on 21 occasions in November 1997. And, she concluded that
23 Appellant committed gross misconduct and violated agency policy when she "borrowed" money
24 from store funds.

1 2.25 Ms. Lieurance felt that while she did not have absolute proof, she was 85% certain that
2 Appellant had borrowed funds from the store. After reviewing the entire situation, she felt that
3 Appellant failed to conduct herself in a manner expected of a store manager, failed to act as a leader
4 and positive role model for her staff, and breached the trust that was placed in her as a store
5 manager. Ms. Lieurance determined that a demotion would be sufficient and would allow
6 Appellant an opportunity to continue her career with LCB and to correct her behavior in the future.

8 **III. ARGUMENTS OF THE PARTIES**

9 3.1 Respondent argues that Appellant mishandled store funds, that she used manipulation and
10 coercive power over subordinates, and that she admittedly bounced checks at her store, did not pay
11 the NSF handling fees and did not report and document shortages and overages properly.
12 Respondent contends that Appellant's admitted misconduct alone warrants demotion from a
13 management position. Respondent argues that under Appellant's management, store #135 had
14 severe cash handling problems. Respondent asserts that in light of Appellant's history with the
15 agency, her assertion that she did not know the proper cash handling and reporting procedures is not
16 credible. Regarding the fourth incident, Respondent contends that the appointing authority was
17 85% certain that Appellant borrowed money from the store, which would have constituted theft.
18 However, the appointing authority extended mercy because she felt that Appellant was redeemable
19 as an employee and could be rehabilitated. Respondent argues that it has proven that misconduct
20 occurred in each of the four incidents, that Appellant failed to behave in an ethical manner, and that
21 she should not be in a management position.

22
23 3.2 Appellant admits that she made mistakes while she was the manager of store #135 and that
24 she should be held accountable for her mistakes. Regarding incident 1, Appellant contends that
25 when she resolved the shortage there was no reason to notify the district manager. Regarding
26 incident 2, Appellant contends that she told the employees of store #135 to treat her like any other

1 customer. Regarding incident 3, Appellant contends that when she was made aware of the
2 requirement to input overage and shortage explanations into the P.O.S. computer system, she
3 corrected the store's reporting practice. Appellant asserts that when errors have been brought to her
4 attention, she has corrected the problem and it has not reoccurred. Appellant adamantly denies the
5 fourth incident and contends that the evidence does not support the allegation that she stole money,
6 lied about it and tried to cover it up. Appellant further contends that it is not plausible that she
7 could make a phone call, that someone would arrive at the store with money, and that she could
8 make a deposit during the time that Ms. Torge and Mr. Nash were away from the store on March
9 10. Appellant asserts that the absence of corroborating evidence further demonstrates that this
10 incident did not occur. Appellant also asserts that Respondent failed to follow a course of
11 progressive discipline and that she was not given an opportunity to demonstrate improvement.
12 Appellant contends that in light of the proven charges and in consideration of the lack of prior
13 corrective or disciplinary actions, a permanent demotion is too severe.

14 15 **IV. CONCLUSIONS OF LAW**

16 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
17 herein.

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19 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
20 the charges upon which the action was initiated by proving by a preponderance of the credible
21 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
22 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
23 Corrections, PAB No. D82-084 (1983).

1 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
2 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
3 of Social & Health Services, PAB No. D86-119 (1987).

4
5 4.4 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to
6 do, or the performance of an action that ought not to be done, that affects, interrupts or interferes
7 with the performance of an official duty. Parramore v. Dep't of Social & Health Services, PAB No.
8 D94-135 (1995), aff'd, Thurston Co. Super. Ct. No. 95-2-03516-4.

9
10 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
11 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

12
13 4.6 Willful violation of published employing agency or institution or Personnel Resources
14 Board rules or regulations is established by facts showing the existence and publication of the rules
15 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
16 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
17 Health Services, PAB No. D93-053 (1994).

18
19 4.7 Respondent has failed to prove that Appellant neglected her duty or willfully violated
20 agency procedure in regard to the cash shortage of \$1409.79. A literal reading of the policy
21 indicates that Ms. Reynolds should have contacted the district manager when she discovered the
22 shortage. Appellant should have made sure that Ms. Reynolds followed through with this
23 requirement. Furthermore, Appellant exercised poor judgment when she did not inform the district
24 manager of the discrepancy in computer entries. Even though we conclude that Appellant should
25 have taken additional actions in regard to this incident, Respondent has not proven that she
26 neglected her duty or violated procedure when she did not contact the district manager.

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2 4.8 Regarding incidents 2 and 3, Respondent has met its burden of proof that Appellant
3 neglected her duty, committed an act of malfeasance, willfully violated agency policies and
4 procedures, and that her behavior rose to the level of gross misconduct. As a store manager,
5 Appellant was responsible to assure that she and all of the employees of the store complied with
6 agency policies and procedures. Also as a store manager, Appellant was expected to provide
7 leadership and to model a standard of behavior that was above reproach. In both incidents 2 and 3,
8 Appellant failed to act in a manner consistent with her position as store manager.

9
10 4.9 Regarding incident 4, by a preponderance of the credible evidence and testimony,
11 Respondent has proven that more likely than not, Appellant borrowed store funds. Respondent has
12 met its burden of proof that Appellant's action constituted gross misconduct and a willful violation
13 of agency policy.

14
15 4.10 In determining whether a sanction imposed is appropriate, consideration must be given to
16 the facts and circumstances including the seriousness and circumstances of the offense. The penalty
17 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent
18 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.
19 An action does not necessarily fail if one charge is not sustained unless the entire action depends on
20 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

21
22 4.11 Demotion would be warranted for Appellant's admitted misconduct alone. Therefore, under
23 the totality of the proven facts and circumstances demotion is not too severe in this case. In spite of
24 Appellant's unblemished employment history, given the willful nature Appellant's misconduct and
25 her years of experience with the agency and as a store manager, demotion is consistent with the
26 concept of progressive discipline. The appeal should be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kathleen Spradley is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Walter T. Hubbard, Chair

Gerald L. Morgen, Vice Chair

Personnel Appeals Board
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